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[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FOO/170271

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 23, 2015, under Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on December 16, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether an application for FoodShare benefits was correctly denied because Petitioner is a post-secondary student and does not meet an exemption necessary for FoodShare eligibility by a post-secondary student.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703  
By: Simone Johnson  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

David D. Fleming  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. Petitioner previously had an open FoodShare case but it closed as of the end of July 2015. Petitioner reapplied for FoodShare in November 2015. That application was denied. The reason

for the denial was that the agency concluded that Petitioner was ineligible for FoodShare as a full-time postsecondary student not meeting an exemption necessary for FoodShare eligibility.

3. Petitioner is a postgraduate student at the [REDACTED] working on a master's degree in social welfare. That degree requires 56 credits and can be completed in two years with full-time attendance including summer sessions. As of December 2015 Petitioner completed 26 credits and was anticipated to graduate in August 2017.

### **DISCUSSION**

A student enrolled in an institution of higher education can only non-financially qualify for FoodShare benefits in limited circumstances:

Anyone, age 18-49, enrolled half time or more, in an institution of higher education is ineligible, unless s/he meets one of the following criteria.

1. Employed at least 20 hours a week at any wage.
2. Self employed at least 20 hours a week with self employment earnings (after SE expenses are subtracted) equivalent to at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week).
3. Both employed and self-employed at least 20 hours a week and earning at least the federal minimum wage for 20 hours a week ( $\$7.25 \times 20 = \$145$  a week). Earnings are based on self employment income (after SE expenses are subtracted) plus gross income from other employment.
4. Participating in a federal or state work study program.
  - Continue the exemption until the end of the month in which the school term ends, or the student refuses to do his assigned work. A student who has stopped working during the school year because the work study funding has run out would continue to be classified as an eligible student until the end of the school term.
  - The exemption does not cover school breaks of longer than one month, unless the student is participating in work study during the break.
5. Responsible for the care of a dependent household member under age 6. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
6. Responsible for the care of a dependent household member who has reached age 6 but is under age 12 if the agency determines adequate child care is unavailable. If 2 people exercising parental control are in the food unit, allow student status to only 1 person per child.
7. Is a single parent enrolled in an institution of higher education on a full-time basis (as determined by the institution) and is exercising care and control of a dependent food unit member under the age of 12. To apply this provision there must be only one biological or adoptive parent, or stepparent in the same food unit as the child. If there is no biological or adoptive parent or stepparent living with the child, another full-time student living with the child may qualify as an eligible student under this provision if the student has parental control of the child and does not live with his or her spouse.
8. Receiving a Tribal TANF [Temporary Assistance for Needy Families] cash payment, W-2 cash payment, or working in a W-2 Trial Job. Assigned to or placed in an institution of higher learning by WIA [Workforce Investment Act].
9. Enrolled in a W-2 employment position or other TANF funded program under Title IV of the Social Security Act.
10. Physically or mentally unfit for gainful employment. Verify the claim, if it's not clear. Receipt of temporary or permanent disability benefits, a statement from a physician, or certified psychologist is appropriate verification.
11. Participating in an on-the-job training program. This exemption applies only during the period of time the person is being trained by the employer.

12. Is assigned to or placed in an institution of higher education through or in compliance with the requirements of FSET [FoodShare Employment and Training].
  13. Is enrolled in an educational program that is designed to be completed in 2 years or less and obtaining certification or a diploma from the program will lead to employment that is in demand.
- FoodShare Wisconsin Handbook (FSH), at §3.15.1; also found in the Code of Federal Regulations - see 7 CFR 273.5.*

The only relevant exception here is # 13 from the list of exceptions noted above. Also relevant to the issue of postsecondary education FoodShare eligibility are the following:

...

#### **BACKGROUND**

The federal Food & Nutrition Service (FNS) has issued guidance in response to questions raised by Quality Control reviews in several states, related to student eligibility for FoodShare benefits.

Federal regulations prohibit students enrolled at least half time in an institution of higher education from receiving FoodShare benefits unless specific exemptions are met. FNS has broadened the list of acceptable exemptions for certain students if the course of study has a direct link to employment and participation of the student in higher education is equivalent to participating in an education activity that has been approved in the State FSET Plan. Education has been approved as an allowable component in the Wisconsin FSET State Plan.

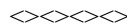
#### **POLICY CHANGE**

A student enrolled in higher education at least half time, who does not otherwise meet an exemption for eligible student status, may be eligible to receive FoodShare benefits if:

- The student is enrolled in a business, technical, trade, or vocational school that will result in obtaining a certificate or diploma in 2 years or less, and
- Obtaining the certificate or diploma will lead to employment that is in demand, and
- All other eligibility requirements for FoodShare are met.

...

*Operations Memo # 10-80, issued November 15, 2010*



#### **1.4.2 Education and Vocational Training**

Educational programs or activities that improve basic skills and employability are qualifying activities that meet the participation requirement as long as there is a direct link between the educational activity and employment.

Allowable educational activities include Adult Basic Education (ABE), basic workplace literacy, English as a Second Language (ESL), high school equivalency (GED), short-term training certification and some types of post-secondary education.

Vocational training activities are also qualifying educational activities for ABAWDs. These training programs improve employability by providing training in a skill or trade, thereby allowing the participant to move directly and promptly into employment. Acceptable vocational training programs should expect to lead to employment that is in demand.

FSET agencies are encouraged to work with local employers to design customized job skills training programs based on the skill needs of employers in the local labor market. This includes partnering with technical colleges to offer certified qualifying training programs.

The following factors are critical in determining whether FSET funding may be used to fund an educational component:

- A participant must be assigned to, or placed in, an approved educational component by the FSET agency as part of the participant's employment plan;
- FSET funding cannot be used to supplant funds for existing services;
- Charges for FSET students cannot exceed the cost applied to non-FSET students for the same service; and
- A FoodShare member who is an eligible student already attending the institution (without benefit of FSET participation) is exempt from FoodShare work requirements, including FSET participation. While the student may volunteer to participate in another FSET activity, his or her education costs are already being met, and it is not appropriate to use federal funds to subsidize those expenses.

*FSET Handbook, §1.4.2.*

Petitioner contends that he had previously been eligible for FoodShare as a graduate student and because the master's program can be completed within two years he should be eligible for FoodShare as he meets the exemption noted at # 13 in the *FoodShare Wisconsin Handbook*. I conclude, however, that the exemption at # 13 does not apply here and that the agency correctly denied Petitioner's November 2015 FoodShare application.

The master's program involved here can be completed within two years though it does not seem to be designed to be completed that quickly. There is no evidence as to whether a master's in social work is a career in demand. Regardless, the Operations Memo and relevant Handbook provisions noted above make apparent that the intent behind the exemption at issue is that it applies to very basic educational programs and educational programs for skilled trades. Finally, the FoodShare program does not provide for eligibility for 4 year programs, even for programs such as nursing, so it is not logical that exemption apply to a master's program.

### **CONCLUSIONS OF LAW**

That Petitioner's November 2015 FoodShare application was correctly denied.

**THEREFORE, it is**

**ORDERED**

That this appeal is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

**APPEAL TO COURT**

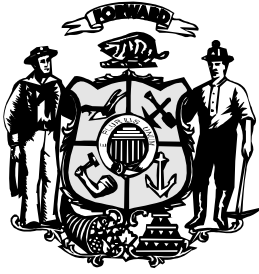
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of January, 2016

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\sDavid D. Fleming  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 21, 2016.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability